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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,356	09/20/2000	Daniel J. Parker	HILB/ 609C3	8608

7590

08/06/2002

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EXAMINER

MILLER, WILLIAM L

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 08/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/666,356

Applicant(s)

PARKER, DANIEL J.

Examiner

William L. Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5,7,14 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8-13,15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group V, Figs. 10-11, claims 1-6, 8-15, and 17-20, in Paper No. 7 is acknowledged. However, claims 5 and 14 recite a sundial which is not an element of Figs. 10-11. Consequently, claims 5, 7, 14, and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

Priority

2. If applicant desires priority under 35 U.S.C. 120 based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. _____" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 7, 11, and 12 of U.S. Patent No.

6,175,995. Although the conflicting claims are not identical, they are not patentably distinct from each other because each include: a lawn or garden sculpture for containing cremated remains comprising a pedestal (decorative structure/cylinder/cremation remains compartment); and an ornament (sundial).

5. Claims 1-3 and 8-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 5,903,961. Although the conflicting claims are not identical, they are not patentably distinct from each other because each include: a lawn or garden sculpture for containing cremated remains comprising a pedestal; an ornament (sundial); and a cylindrical container (tube) having a cover (cap).

Claim Rejections - 35 USC § 112

6. Claims 8-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. It is unclear if the "container" recited in claim 8, line 5, is referencing the "container" previously recited in claim 8, line 2.

8. It is unclear if the "container" recited in claim 17, line 5, is referencing the "container" previously recited in claim 17, line 2.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4 and 8-11, 13, 17, 18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by British Pat. No. 2,313,587.

11. British '587 discloses in Fig. 3 a method of memorializing a deceased and/or combination lawn and garden sculpture and cremation remains container comprising: a pedestal 22 having an open first (upper) end at 24, a closed second (lower) end, and at least one wall therebetween; a container receiving the cremated remains removably received in the pedestal (page 5, line 25+), the container including an open first (upper) end, a closed second (lower) end, and at least one wall therebetween as the container is a cylinder (jar-like) with a removable cover (screw cap) (page 2, line 23+); and an ornament 21 (bird bath or sundial).

12. Regarding claim 4, cap 25 is placed between the ornament 21 the pedestal 22 and is therefore being viewed as "effecting a seal" between the ornament and the pedestal.

13. Regarding claims 13 and 17, cap 25 is interposed between the ornament and the pedestal and is therefore being viewed as a "gasket".

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 6 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over British '587 in view of Virginia Metalcrafters "In the Garden" (1997).

16. British '587 discloses the ornament 21 may be a bird bath, sundial, etc., yet fails to disclose the ornament as an armillary. Virginia Metalcrafters discloses lawn and garden sculptures including a pedestal supporting a bird bath, sundial, or armillary. Therefore, as supported by Virginia Metalcrafters, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lawn and garden sculpture of British '587 by including an armillary ornament for aesthetic purposes.

17. Claims 12 and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over British '587 in view of Janicki et al. (US#5989662).

18. British '587 discloses the container cover as a screw cap as opposed to a cover including a radially inner portion and a radially outer lip for receiving the upper end of the container therebetween as claimed by the applicant. However, Janicki discloses a container having a screw cap (Fig. 11) or a cover including a radially inner portion and a radially outer lip for receiving the upper end of the container therebetween (Fig. 10). Therefore, as supported by Janicki, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lawn and garden sculpture of British '587 by utilizing a cover including a radially inner portion and a radially outer lip for receiving the upper end of the container therebetween as in as much as the references disclose these elements as art recognized

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equivalents, it would have been obvious to one of ordinary skill in the art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Longstreth, Jackson, Morella, Jones, Wood et al., Bowling et al., and JP 2000234455A disclose similar subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is 703 305 3978. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703 306 4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9326 for regular communications and 703 872 9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.

William L. Miller
Examiner
Art Unit 3677



wlm
August 1, 2002